

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on January 7, 2003 at 4:15 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB2, 12/12/2002
Executive Action: none

NOTE: Prior to the Hearing on SB 2, the committee members were presented with an overview of the background and function of the Consumer Counsel by Bob Nelson of said Counsel. He touched on the issue of the default supplier and urged the committee to make sure the consumers continue to be able to chose an energy supplier. He closed by thanking the committee for allowing him to give this overview and promised to have the Counsel's bi-annual report delivered to them shortly.

This was followed by a summarization of the 2001-2002 interim activities of the Transition Advisory Committee by its chairman, **Sen. Fred Thomas** (see enclosed summary). He also touched on a few upcoming bills assigned to this committee (SB 67, SB70, SB 77, SB 91, and SB 146) and recommended that the committee consider them. He also handed out a Summary of Power Supply Arrangements as it pertained to the large industrials.

The third informational presenter was Ralph Cavanagh, Energy Program Director, NRDC who handed his type-written speech to the secretary (also enclosed but not labeled since these hand-outs are not official hearing exhibits).

After a brief recess, the hearing on SB 2 commenced at 4:15 p.m.

HEARING ON SB 2

Sponsor: SEN. DON RYAN, SD 22, GREAT FALLS

Proponents: Cort Jensen, Dept. of Admin., Consumer Protection Office
Matthew Leow, MontPIRG
Brad Griffin, MT Retail Association
Rick Hays, Qwest

Opponents: Mary Williams, AARP
Mark Staples, MCI/WORLDCOM
Roger Halver, MT Association of Realtors
Riley Johnson, NFIB

Opening Statement by Sponsor:

SEN. DON RYAN, SD 22, GREAT FALLS, opened by explaining that SB 2 dealt with creating a no-call list for telemarketing in Montana. He felt that this was an issue the people of Montana wanted taken care of because they wanted protection from the constant barrage of calls from telemarketers in their homes. He stated that the elderly, and impressionable young people, were the most vulnerable and therefore targets. The bill is fashioned after an Oregon telemarketing bill which a constituent brought to him. He reviewed some of the definitions and exclusions in SB 2 and added that SB 62 which was also sponsored by him would be heard in this committee on January 14, 2003. His hope was that SB 2 would bring some of the issues and concerns to the forefront, and that between the two bills legislation would be crafted to protect the people of Montana from these calls. He explained that in Oregon, there was a cost to the consumer who had to pay a nominal fee to be put on the no-call list. In this context of possible revenue,

he pointed out that the fiscal note had not yet been prepared. He went on to say that per Section 3, the Department of Administration would contract out to a service which would then be in charge of the no-call list. He advocated public education on this matter, and stressed that there was a \$2,000 fine for each violation of the law.

Proponents' Testimony:

Cort Jensen, Dept. of Administration, Consumer Protection Office, handed in written testimony, EXHIBIT(ens02a01). He also explained that he did not agree with the methods used in SB 2 and felt that some of the funding and enforcement mechanisms could be dealt with differently even though he agreed with the bill's purpose.

Matthew Leow, MontPIRG, rose in support of SB 2, stating that he and his organization believed strongly in consumer protection and the right to privacy. He lauded the fact that this presented a one-step function of having one's name put on the list rather than contacting each individual company. He wanted to see an amendment on page 2, line 3 that states "calls made by or on behalf of a bona fide charitable or nonprofit organization ..." because oftentimes, these nonprofit agencies contracted out some of their fund raising calls and such a change would clarify this exemption.

Brad Griffin, Montana Retail Association, stated that he liked the pre-existing business relationship provision contained in the bill. He proposed a small change, namely on page 1, line 26: to add the word "receivable" after "account". He explained that most retailers have structured their captive retail credit operations in such a way that the retailer's store brand credit cards are issued by a wholly owned bank subsidiary with a name nearly identical to the retailer's. These subsidiaries often sell or assign their credit card customer's accounts receivable to their respective parent retailers; the customer accounts themselves are not sold or assigned. His proposed revision then would merely correct the statutory language to reflect industry practice regarding the sale or assignment of credit card receivables, and he told the sponsor that he would turn this into him the following day.

Rick Hays, Qwest, felt that the current language in the bill protected consumers, and he lauded the existing business relationship exemption as well because it protected and helped continue vital economic stimulus to Montana's economy. His only concern was that SB 2 could be in conflict with the FTC's rules once they were finalized.

Opponents' Testimony:

Mary Williams, AARP, provided written testimony, **EXHIBIT (ens02a02)**.

Mark Staples, MCI/WORLDCOM, stated that while he understood the need for this legislation, he feared that it could end up in conflict with the FTC rule. He felt that the bill contained too many exemptions and took particular exception to the well-seeming pre-existing business relationship provision. This provision in effect created a monopoly for the local carrier at the expense of a competitive long-distance carrier unless the latter had already established a business relationship. He urged the committee to take another look at this provision because it allowed too big an exemption.

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Roger Halver, Montana Association of Realtors, expressed concern that this bill may prohibit a realtor from making cold calls to prospective sellers. He suggested that the committee borrow language from SB 62, Section 2, subsection (b) and add the following as in **EXHIBIT (ens02a03)**.

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, advised him that he needed to have one of the committee members offer up this amendment as he could not do so on his own.

Riley Johnson, NFIB, explained that his organization represented roughly 8,000 members in Montana with the typical business having no more than three employees and gross annual sales of \$250,000 to \$300,000. He stated that while he understood and accepted the need for this kind of legislation, he shared many people's dislike of the telemarketing calls and opposed the bill because he objected to the charge to the consumer. Secondly, he felt if this was not funded by the public, funding for this program would have to come from the solicitors. He referred to page 3, line 10 of the bill where it says under (a) "Upon request of a person engaging or intending to engage in telephone solicitations and after payment of the fees in the amounts specified in the contract between the administrator and the department" and said that he feared this meant they could charge any amount they saw fit. He elaborated that if the public's \$10.00 did not come in, the total cost of the program would be divided by the number of soliciting businesses and they would be charged that amount. He asked the committee to put a limit on the cost so that there would be some control. Thirdly, he referred to page 3, line 7, saying this provision was unnecessary; citing lines 13, 17, 22 and 24, he complained that the confidentiality issue was poorly designed and voiced his strong objection. Along with some of the

previous people who testified, he had reviewed SB 62 and said that the debate concerning telemarketing should take place with regards to that bill.

CHAIRMAN JOHNSON advised the audience that Executive Action would not be taken on SB 2 until after SB 62 was heard.

Questions from Committee Members and Responses:

SEN. BEA McCARTHY, SD 29, ANACONDA, asked **Mr. Griffin** whether she had heard correctly that most store credit card customers were on a call list. **Mr. Griffin** replied that since they were joint customers of the retailer's, there was a sharing of the lists.

SEN. McCARTHY probed further and asked if the holder of any store credit card then was added to those call lists upon acceptance of the card. **Brad Griffin** reiterated that the issuing banks in these cases were wholly owned subsidiaries of a company like Sears, for example; as such, a person who accepted a Sears Mastercard was a customer of Sears as well, and the store would use this to offer other services, such as extended warranties and insurance coverage. **SEN. McCARTHY** charged that she had read through all the Terms of Agreement when she recently applied for a Home Depot credit card, and it did not say anywhere that she would be part of a telemarketing call list. She wondered if that constituted fraud. **Mr. Griffin** stated he could not speak for that particular store since he was not familiar with their terms but since she now was a customer of Home Depot, they could call and offer other services.

VICE CHAIR COREY STAPLETON, SD 10, BILLINGS, asked the sponsor why he was carrying two similar bills, and which one he would prefer to have pass. **SEN. RYAN,** while not admitting his preference, replied that this bill request was submitted prior to the second LC being drafted, and that it took an entirely different approach in that the Department of Administration was in charge of monitoring SB 2 whereas SB 62 was placed under the jurisdiction of the Attorney General's Office. He went on to say that it was up to this committee to decide which approach to choose: whether the businesses should fund the program or the customers paid a nominal fee. The most important issue to him was to pass legislation for a no-call list, and if SB 2 was not passed, it still left SB 62. **VICE CHAIR STAPLETON** pointed out that there were several other similar bill requests.

SEN. MIKE TAYLOR, SD 37, PROCTOR, referred to page 2, line 3 and asked **Matthew Leow, MontPIRG,** if he would be in favor of the bill if "nonprofit organization" was stricken. **Mr. Leow** replied that he would have to look further into it but that this was the opposite of what he had asked for in his testimony.

SEN. TAYLOR then inquired of **Mr. Hays of Qwest** if it was not creating a monopoly by allowing businesses who had prior contact to make telemarketing calls. **Mr. Hays** explained that this provision did not lend more strength or power in the market to those companies. This was especially true for Qwest who had been moving away from that type of marketing effort. Next, **SEN. TAYLOR** addressed **Mr. Johnson**, relating a recent and serious telemarketing effort directed against him, and asked if he, on behalf of his organization, was truly interested in a fair and equitable bill, to which **Mr. Johnson** replied that he most certainly was.

SEN. KEN TOOLE, SD 27, HELENA, wondered if **Mr. Hays** was allowed to take the customer list from his regulated function and share it with unregulated affiliate organizations. **Mr. Hays** answered that within Qwest, they had that option at this time but were evaluating the practice because of some actions being taken by the FTC. **SEN. TOOLE** then wanted to know if the FTC was dealing with this kind of affiliate transaction, and **Mr. Hays** explained that the FTC was still promulgating the rules to determine how this would work and be viewed by the states who had a chance for input as well.

CHAIRMAN JOHNSON advised **Cort Jensen, Department of Administration**, that his letter regarding the costs involved in this bill had been sent to the Budget Office for a Fiscal Note to be compiled. He remembered that **Mr. Jensen** was strongly advocating the use of the federal list, and he wondered how it would fit in with what the committee was trying to do with a Montana program. **Mr. Jensen** responded by quoting an option contained in the FTC's website which said that if a state wished to adopt and use the federal list, and they were required to buy the list and operated within Montana, they could simply buy the 406 specific version of the federal list; he cautioned that this list would not be available until June of this year. **CHAIRMAN JOHNSON** then wondered if this would lessen the cost to the consumer, and **Mr. Jensen** affirmed that the consumer would not be charged to be on the federal list, and that the FTC had offered to provide the list to state enforcement agencies for free as well. He surmised that this would cost less than either SB 2 or SB 62.

SEN. BOB STORY, SD 12, PARK CITY, wanted to confirm that **Mr. Halver's** proposed amendment would exempt licensed businesses besides realtors. **Mr. Halver** explained that there were thirty-three different licensing classifications this amendment would fall under, plus the licensing of insurance agents through the

State Auditor's Office. His proposed exemptions would cover these 34 professions.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked whether intra-state calls would be covered if a state adopted the federal no-call list. **Mr. Jensen** confirmed that intra-state calls would not be covered and would require state action because the federal government lacked jurisdiction.

SEN. GARY PERRY, SD 16, MANHATTAN, wondered why **Mr. Griffin** testified in favor of SB 2 while saying he preferred an alternative to the bill. **Mr. Griffin** explained that he liked the prior existing relationship provision in SB 2 because his organization represented many large and small retailers who issued their own credit cards, and with the amendment he had offered, he did indeed support SB 2. **SEN. PERRY** expressed concern over the fact that retailers issuing credit cards also solicited their cardholders to buy services like life insurance which he neither wanted to discuss with or buy from them. He cited The Bon Marche as an example and asked for clarification whether SB 2 or an alternative bill would permit such solicitation to credit card holders or if that would be deemed a violation of the bill. **Mr. Griffin** replied that if the credit card was issued by the bank owned by the retailer in question, they could exchange cardholder names, and if there was an insurance company that was owned by the retailer, then such solicitation would not be in violation. **SEN. PERRY** charged that the whole intent of no-call list legislation was to discontinue unsolicited telemarketing calls, and he for one would strongly oppose having to endure these calls just because he was a credit cardholder.

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SEN. STORY asked **Mr. Griffin** to clarify that if a retailer had an agreement with a bank to handle his credit cards, would this give the bank the authority to call the cardholder. **Mr. Griffin** responded that this was not correct; with his proposed amendment, his intention dealt with the bank as a wholly owned subsidiary of the retailer. **SEN. STORY** went back to the insurance issue, saying that a lot of banks are in the insurance business, selling insurance policies as well as stocks and bonds, and the scenario described by **SEN. PERRY** was easy to imagine.

SEN. TAYLOR stated that there is a mechanism through the local telephone provider whereby the consumer subscribes to a message saying that his phone did not accept solicitation calls. He asked if anyone knew how much this service cost. **Mr. Hays** confirmed that there was such a service but he did not know its price tag and promised to furnish that information the following

day. **Mr. Jensen** explained that the cost varied greatly and depended on who the provider was but cautioned that these messages were not regulated by either federal or state law and therefore, callers would not be violating any laws if they do call.

Closing by Sponsor:

SEN. RYAN closed by thanking the opponents for bringing their objections because this dialogue served to focus on and tighten up the issues resulting in a good bill that would protect Montanans from these unwanted calls. He touched on the tremendous amount of pressure brought by lobbyists seeking exemptions on the federal level, and stressed that the state needed to pass such legislation in order to protect its citizens now and not wait for the federal government to come through.

Note: **EXHIBIT (ens02a04)** was given to **CHAIRMAN JOHNSON** right after the meeting, and **EXHIBIT (ens02a05)** was handed in to the secretary on the following day.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens02aad)